

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

FILED IN CHAMBERS
U.S.D.C. Atlanta

AUG 28 2007

ATLANTA DIVISION

JAMES N. HATTEN, Clerk
By: *J. Wade-Chiles*
Deputy Clerk

UNITED STATES OF AMERICA

v.

R. CLAY HARRIS
a/k/a CLAYBON R. HARRIS
a/k/a CLAY HARRIS

CRIMINAL INDICTMENT

NO.

1: 07-CR-287

THE GRAND JURY CHARGES THAT:

COUNT ONE

(18 U.S.C. § 371 - Conspiracy)

1. From in or about November 2000, and continuing at least through November 2002, the exact dates being unknown to the Grand Jury, in the Northern District of Georgia and elsewhere, the Defendant, R. CLAY HARRIS, unindicted co-conspirators Arthur Scott and Evelyn Myers Scott, did knowingly and willingly combine, conspire, and agree with each other and others, both known and unknown to the Grand Jury, to commit offenses against the United States, to wit:

- (a) to corruptly give, offer, and agree to give anything of value to any person, with the intent to influence and reward an agent of a local school district, which local school district received federal assistance in excess of \$10,000 or more in a one-year period, in connection with any business, transaction, and series of transactions of

such local school district involving anything of value of \$5,000 or more, in violation of Title 18, United States Code, Section 666(a)(2);

- (b) devising a scheme to defraud the Atlanta Public Schools ("APS") and the citizens of Atlanta, and to deprive APS of the honest services of Arthur Scott and Evelyn Myers Scott, including APS' right to Arthur Scott's and Evelyn Myers Scott's loyal, faithful, disinterested, unbiased services, to be performed free of deceit, undue influence, conflict of interest, self-enrichment, self-dealing, concealment, fraud, and corruption, and in furtherance thereof did knowingly cause to be sent and delivered by the United States Postal Service or private or commercial interstate carrier any matter or thing, and did knowingly transmit and cause to be transmitted, in interstate commerce, by means of wire communications, certain writings, signs, signals and sounds for the purpose of executing such scheme and artifice to defraud, in violation of Title 18, United States Code Sections 1341, 1343 and 1346.

BACKGROUND

At all times relevant to this Indictment, unless otherwise stated:

Atlanta Public Schools

2. Atlanta Public Schools ("APS") was a public school

district in the City of Atlanta, located in the Northern District of Georgia, with approximately 51,000 students enrolled in approximately 100 different schools. It had an annual operating budget of approximately \$526,000,000. Among the powers of APS was the ability to purchase technology-related equipment and services from vendors for the benefit of its member schools. APS received at least \$10,000 in assistance from the United States government each year relevant to the indictment.

3. APS' Information Services ("IS") Department had two divisions: the Information Technology ("IT") Division and the Operational Technology/Telecommunications ("OTT") Division. The OTT Division was responsible for APS' technology infrastructure, including network maintenance and hardware installation. OTT was also responsible for managing and overseeing APS' E-Rate program.

The Federal E-Rate Program

4. The E-Rate program was created by Congress in the Telecommunications Act of 1996, and it operated under the auspices of the Federal Communications Commission ("FCC") to provide funding to connect needy schools and libraries to the Internet. The FCC designated the Universal Services Administrative Company ("USAC"), a non-profit corporation, to administer the E-Rate program. Substantial quantities of money were collected monthly from telecommunications customers across the country to fund the program.

5. E-Rate was designed to ensure that the neediest schools received the most financial help. All participating school districts were required to fund a percentage of the cost of the equipment and services acquired under the E-Rate program (hereinafter referred to as "co-pay"). The amount of the co-pay was based on the number of students in the district qualifying for the United States Department of Agriculture's school lunch program, with the neediest school districts being eligible for the highest percentage of funding. The neediest schools were required to pay a co-pay of at least 10% for equipment and services acquired under the program.

6. During the relevant period, school district applications for E-Rate funding far exceeded the funding available. USAC had the following rules and procedures, among others, to ensure that E-Rate funding was distributed to the widest number of qualifying applicants:

- a. only USAC-approved equipment, services, and supplies were eligible for funding;
- b. school districts could seek funding only for projects for which the districts had budgeted funds for their co-pay amount and for the purchase of the end-user equipment and services necessary to utilize the applied-for equipment and services;
- c. service providers or their agents could not

participate in the vendor selection process or the completion of forms necessary for the school districts to receive E-Rate funding in order to avoid a conflict of interest or even the appearance of a conflict of interest; and

- d. school districts were required to follow local and state law competitive bidding procedures to ensure that the school districts received the most cost-effective bids from the responsive bidders.

APS' E-Rate Program

7. Arthur Scott was the Director of OTT from approximately 1998 through April 2003, had overall management responsibility for APS' E-Rate program, and supervised a staff of approximately 30 employees and 10-20 contractors. Arthur Scott designed APS' voice, data, and video network to provide state-of-the-art internet and telecommunications capabilities to APS schools and facilities. At the start of each E-Rate funding year ("FY") in January, Arthur Scott selected the vendors who would provide E-Rate eligible equipment and services to specific APS schools that year. Arthur Scott was also responsible for submitting APS' E-Rate applications which sought funding for the selected vendors to perform work on various APS E-Rate projects.

8. Evelyn Myers Scott ("Myers Scott") worked as an Applications Programmer and Network Security Analyst for APS IS

from approximately August 1997 through approximately August 2004. During this time period, Arthur Scott was one of Myers Scott's supervisors. On or about May 1, 2001, Arthur Scott and Myers Scott formed a business partnership named M&S Consulting. Arthur Scott and Myers Scott were romantically involved from at least December 2000 and were married in November 2002.

9. As APS employees, Arthur Scott and Myers Scott owed APS and the citizens of Atlanta their honest services, including their loyal, faithful, disinterested, unbiased services, to be performed free of deceit, undue influence, conflict of interest, self-enrichment, self-dealing, concealment, fraud, and corruption. Arthur Scott and Myers Scott were aware of, and acknowledged, APS' Conflict of Interest policy. This policy required, among other things, that each employee had a duty to act in the best interest of the students and school system; that no employee would use his or her influence or authority as an APS official to sell or effect a sale, directly or indirectly, for personal gain, to the Board or to any APS employee; and that no employee would accept outside employment or business activity with obligations which might conflict, or appear to conflict, with the interests of APS.

10. From approximately 1998 to 2003, APS received over \$60 million in federal E-Rate funding for network infrastructure, telecommunications services, and internet access.

11. On or about April 14, 1998, APS' Board of Education

approved a board action item recommended by Arthur Scott and other APS IS employees to designate five vendors, including IMC Educational Services, a joint venture comprised of three companies (Multimedia Communication Services Corporation ("MCSC"), ICN and Contech 2000), as approved network cabling infrastructure vendors for APS E-Rate projects. MCSC later replaced IMC Educational Services as one of the five approved network cabling infrastructure vendors. Until in or around the fall of 2002, Arthur Scott, and other APS IS employees, allocated E-Rate work and other technology-related work to the approved cabling vendors without requiring them to submit competitive bids for specific projects.

12. Arthur Scott, and other APS IS employees, submitted E-Rate funding applications based on templates requesting identical equipment and services at set prices for particular categories of schools, instead of submitting requests based on a school's specific needs.

13. Arthur Scott, and other APS IS employees, allowed the APS service providers to bill the E-Rate program in advance of providing equipment and services to APS, in violation of E-Rate program rules and regulations. This advance funding, along with submitting E-Rate funding applications based on templates, resulted in overpayments to the APS service providers, including MCSC.

14. Arthur Scott directed APS service providers, including MCSC, to use these overpayments to pay for equipment and services

which had not been approved by the E-Rate program, including the construction of the Brewer Data Center and related improvements, consulting bills, and computer hardware and software, in violation of E-Rate program rules and regulations.

DEFENDANT

15. The Defendant, R. CLAY HARRIS, was the President and 51.3% owner of MCSC from at least 1998 until the time of indictment. MCSC was an Illinois corporation with its headquarters located in Atlanta, Georgia. MCSC received over \$15 million in federal E-Rate program funds for APS work during the period from September 1999 to July 2002. MCSC received approximately \$11 million of these funds during the period from December 2001 through July 2002.

OBJECTS OF THE CONSPIRACY

16. It was an object of the conspiracy for Arthur Scott, the Director of OTT who had overall management responsibility for APS' E-Rate program, to enrich himself and Myers Scott by corruptly accepting things of value with the intent of being influenced and rewarded for supporting the interests of the Defendant, R. CLAY HARRIS, and his company, MCSC, in connection with APS' E-Rate program and other APS work.

17. It was a further object of the conspiracy for the Defendant, R. CLAY HARRIS, to corruptly give things of value to Arthur Scott and Myers Scott with the intent of influencing and rewarding Arthur Scott for supporting the interests of the

Defendant, R. CLAY HARRIS, and his company, MCSC, in connection with APS' E-Rate program and other APS work.

MANNER AND MEANS OF THE CONSPIRACY

18. It was part of the conspiracy that the Defendant, R. CLAY HARRIS, would and did corruptly give checks totaling approximately \$234,329 to Arthur Scott and Myers Scott.

19. It was further part of the conspiracy that Arthur Scott and Myers Scott would and did corruptly accept checks totaling approximately \$234,329 from the Defendant, R. CLAY HARRIS.

20. It was further part of the conspiracy that Arthur Scott would and did corruptly provide influence and favorable treatment to the Defendant, R. CLAY HARRIS, and his company, MCSC, in conjunction with awarding APS E-Rate and other APS work to MCSC, in exchange for the many bribes paid by the Defendant, R. CLAY HARRIS.

21. It was further part of the conspiracy that Arthur Scott and Myers Scott concealed from APS their ownership of M&S Consulting and their acceptance of \$234,329 in payments from the Defendant, R. CLAY HARRIS, whose company, MCSC, conducted business with APS and was awarded over \$11 million in APS E-Rate work and other APS work.

22. It was further part of the conspiracy that Arthur Scott and the Defendant, R. CLAY HARRIS, used the mails and wires in interstate commerce to transfer funds and to communicate, including via telephone and internet communication, and caused E-Rate funds to be transmitted, by means of wire in interstate commerce, from

USAC's bank account to MCSC's bank account located in the Northern District of Georgia.

23. It was further part of the conspiracy that HARRIS's payments to Arthur Scott stopped when APS announced that future E-rate business would be subject to a competitive bidding process in late 2002. HARRIS submitted a bid but did not receive the contract award.

OVERT ACTS

24. In furtherance of the conspiracy, and in order to effect the purposes and objects thereof, the Defendant, R. CLAY HARRIS, unindicted co-conspirators Arthur Scott and Myers Scott, and others known and unknown to the Grand Jury, committed various overt acts and caused various overt acts to be committed in the Northern District of Georgia and elsewhere, including, but not limited to, the following:

a. On or about November 14, 2000, the Defendant, R. CLAY HARRIS, caused IMC Educational Services to issue a check in the amount of \$10,000 to Myers Scott. The Defendant, R. CLAY HARRIS, signed this check.

b. On or about December 11, 2000, the Defendant, R. CLAY HARRIS, caused IMC Educational Services to issue a check in the amount of \$10,000 to M&S Consulting for the benefit of Arthur Scott. The Defendant, R. CLAY HARRIS, signed this check.

c. On or about January 17, 2001, Arthur Scott, assisted

by other APS IS employees, submitted an application to USAC on behalf of APS requesting approximately \$14,683,387 in E-Rate funds for MCSC to provide equipment and services to APS. Arthur Scott certified the application as being in compliance with E-Rate rules and regulations.

d. On or about January 17, 2001, Arthur Scott, assisted by other APS employees, submitted an application to USAC on behalf of APS requesting approximately \$7,665,840 in E-Rate funds for MCSC to provide equipment and services to APS. Arthur Scott certified the application as being in compliance with E-Rate rules and regulations.

e. In or about April or May 2001, the Defendant, R. CLAY HARRIS, agreed to pay Arthur Scott a monthly payment issued to M&S Consulting, which would be in the guise of a consulting fee.

f. On or about May 1, 2001, Arthur Scott and Myers Scott formed a business partnership named M&S Consulting, which Arthur Scott registered in Fayette County, Georgia.

g. On or about May 18, 2001, the Defendant, R. CLAY HARRIS, caused JR Communications Worldwide, Inc. to issue a check in the amount of \$3,500 to M&S Consulting for the benefit of Arthur Scott. The Defendant, R. CLAY HARRIS, signed this check.

h. On or about May 22, 2001, Arthur Scott opened a bank account at Wachovia Bank in the Northern District of Georgia in the name of M&S Consulting and used the \$3,500 check from JR

Communications Worldwide, Inc. as the opening deposit.

i. On or about July 6, 2001, the Defendant, R. CLAY HARRIS, caused MCSC to issue a check in the amount of \$4,890 to M&S Consulting for the benefit of Arthur Scott. The Defendant, R. CLAY HARRIS, signed this check.

j. On or about August 1, 2001, the Defendant, R. CLAY HARRIS, caused MCSC to issue a check in the amount of \$3,000 to M&S Consulting for the benefit of Arthur Scott. The Defendant, R. CLAY HARRIS, signed this check.

k. On or about August 27, 2001, the Defendant, R. CLAY HARRIS, caused MCSC to issue a check in the amount of \$3,000 to M&S Consulting for the benefit of Arthur Scott. The Defendant, R. CLAY HARRIS, signed this check.

l. On or about September 27, 2001, the Defendant, R. CLAY HARRIS, caused MCSC to issue a check in the amount of \$3,500 to M&S Consulting for the benefit of Arthur Scott. The Defendant, R. CLAY HARRIS, signed this check.

m. On or about November 26, 2001, the Defendant, R. CLAY HARRIS, did deposit or cause to be deposited with United States Postal Service or a commercial interstate carrier, an E-Rate invoice requesting \$3,004,119.37, to be delivered from Atlanta, Georgia to USAC in Lawrence, Kansas.

n. On or about December 6, 2001, the Defendant, R. CLAY HARRIS, caused MCSC to issue a check in the amount of \$7,000 to M&S

Consulting for the benefit of Arthur Scott. The Defendant, R. CLAY HARRIS, signed this check.

o. On or about December 13, 2001, the Defendant, R. CLAY HARRIS, caused USAC to transmit, by means of wire in interstate commerce, \$2,753,690.93 in E-Rate funds to MCSC's bank account located in Atlanta, Georgia.

p. On or about December 18, 2001, the Defendant, R. Clay Harris, did deposit or cause to be deposited with Airborne Express, a commercial interstate carrier, an E-Rate invoice requesting \$1,540,579.79, to be delivered from Atlanta, Georgia to USAC in Lawrence, Kansas.

q. On or about January 9, 2002, the Defendant, R. Clay Harris, did deposit or cause to be deposited with Airborne Express, a commercial interstate carrier, an E-Rate invoice requesting \$589,285.92, to be delivered from Atlanta, Georgia to USAC in Lawrence, Kansas.

r. On or about January 17, 2002, Arthur Scott, assisted by other APS IS employees, submitted an application to USAC on behalf of APS requesting approximately \$11,920,300 in E-Rate funds for MCSC to provide equipment and services to APS. Arthur Scott certified the application as being in compliance with E-Rate rules and regulations.

s. On or about January 17, 2002, Arthur Scott, assisted by other APS IS employees, submitted an application to USAC on

behalf of APS requesting approximately \$4,467,400 in E-Rate funds for MCSC to provide equipment and services to APS. Arthur Scott certified the application as being in compliance with E-Rate rules and regulations.

t. On or about January 31, 2002, the defendant, R. Clay Harris, did deposit or cause to be deposited with Federal Express, a commercial interstate carrier, an E-Rate invoice requesting payment of \$2,635,064.62, to be delivered from Atlanta, Georgia to USAC in Lawrence, Kansas.

u. On or about February 4, 2002, the Defendant, R. CLAY HARRIS, caused MCSC to issue a check in the amount of \$10,927 to M&S Consulting for the benefit of Arthur Scott. The Defendant, R. CLAY HARRIS, signed this check.

v. Sometime between on or about February 4, 2002 and on or about March 16, 2002, the Defendant, R. CLAY HARRIS, and Arthur Scott had discussions about Arthur Scott trying to purchase a new home. The Defendant, R. CLAY HARRIS, offered to give Arthur Scott \$50,000 to use as a down payment on a new house.

w. On or about February 11, 2002, the Defendant, R. CLAY HARRIS, caused USAC to transmit, by means of wire in interstate commerce, \$1,540,579.79 in E-Rate funds to MCSC's bank account located in Atlanta, Georgia.

x. On or about February 26, 2002, the Defendant, R. CLAY HARRIS, caused USAC to transmit, by means of wire in interstate

commerce, \$2,635,064.62 in E-Rate funds to MCSC's bank account located in Atlanta, Georgia.

y. On or about March 5, 2002, the Defendant, R. CLAY HARRIS, caused USAC to transmit, by means of wire in interstate commerce, \$589,285.92 in E-Rate funds to MCSC's bank account located in Atlanta, Georgia.

z. On or about March 16, 2002, the Defendant, R. CLAY HARRIS, caused MCSC to issue a check in the amount of \$32,917 to M&S Consulting for the benefit of Arthur Scott, which reflected a \$25,000 increase to the regular monthly "consulting" payment. The Defendant, R. CLAY HARRIS, signed this check.

aa. On or about April 1, 2002, the Defendant, R. CLAY HARRIS, caused MCSC to issue a check in the amount of \$32,917 to M&S Consulting for the benefit of Arthur Scott, which reflected a \$25,000 increase to the regular monthly "consulting" payment. The Defendant, R. CLAY HARRIS, signed this check.

bb. On or about April 1, 2002, the Defendant, R. CLAY HARRIS, did deposit or cause to be deposited with Airborne Express, a commercial interstate carrier, an E-Rate invoice requesting payment of \$2,246,780.67, to be delivered from Atlanta, Georgia to USAC in Lawrence, Kansas.

cc. In or around April 2002, Arthur Scott used funds he received from the Defendant, R. CLAY HARRIS, for the down payment on his new house located in Tyrone, Georgia.

dd. On or about May 9, 2002, the Defendant, R. CLAY HARRIS, caused MCSC to issue a check in the amount of \$7,917 to M&S Consulting for the benefit of Arthur Scott. The Defendant, R. CLAY HARRIS, signed this check.

ee. On or about May 21, 2002, the Defendant, R. CLAY HARRIS, caused USAC to transmit, by means of wire in interstate commerce, \$2,246,780.67 in E-Rate funds to MCSC's bank account located in Atlanta, Georgia.

ff. On or about June 7, 2002, the Defendant, R. CLAY HARRIS, caused MCSC to issue a check in the amount of \$16,716 to M&S Consulting for the benefit of Arthur Scott. The Defendant, R. CLAY HARRIS, signed this check.

gg. On or about June 14, 2002, the Defendant, R. CLAY HARRIS, did deposit or cause to be deposited with Airborne Express, a commercial interstate carrier, an E-Rate invoice requesting payment of \$1,218,601.14, to be delivered from Atlanta, Georgia to USAC in Lawrence, Kansas.

hh. On or about June 30, 2002, the Defendant, R. CLAY HARRIS, caused MCSC to issue a check in the amount of \$7,917 to M&S Consulting for the benefit of Arthur Scott. The Defendant, R. CLAY HARRIS, signed this check.

ii. On or about July 19, 2002, the Defendant, R. CLAY HARRIS, caused USAC to transmit, by means of wire in interstate commerce, \$1,218,601.14 in E-Rate funds to MCSC's bank account

located in Atlanta, Georgia.

jj. On or about August 6, 2002, the Defendant, R. CLAY HARRIS, caused MCSC to issue a check in the amount of \$18,466 to M&S Consulting for the benefit of Arthur Scott. The Defendant, R. CLAY HARRIS, signed this check.

kk. In or around August 2002, the Defendant, R. CLAY HARRIS, agreed to pay Arthur Scott \$30,000 above the regular monthly payment for personal expenses.

ll. On or about August 30, 2002, the Defendant, R. CLAY HARRIS, caused MCSC to issue a check in the amount of \$37,917 to M&S Consulting for the benefit of Arthur Scott, which reflected a \$30,000 increase to the regular monthly "consulting" payment. The Defendant, R. CLAY HARRIS, signed this check.

mm. On or about October 7, 2002, the Defendant, R. CLAY HARRIS, caused MCSC to issue a check in the amount of \$7,917 to M&S Consulting for the benefit of Arthur Scott. The Defendant, R. CLAY HARRIS, signed this check.

nn. On or about November 13, 2002, the Defendant, R. CLAY HARRIS, caused MCSC to issue a check in the amount of \$7,914 to M&S Consulting for the benefit of Arthur Scott. The Defendant, R. CLAY HARRIS, signed this check.

oo. On or about November 26, 2002, the Defendant, R. CLAY HARRIS, caused MCSC to issue a check in the amount of \$7,914 to M&S Consulting for the benefit of Arthur Scott. The Defendant, R. CLAY

HARRIS, signed this check.

All in violation of Title 18, United States Code, Section 371.

COUNTS TWO to FIVE
(18 U.S.C. § 666 - Bribery)

25. The allegations in paragraphs 1 through 24 of this Indictment are realleged and incorporated herein.

26. On or about the dates listed in Column B below, in the Northern District of Georgia and elsewhere, the Defendant, R. CLAY HARRIS, did corruptly give, offer, and agree to give anything of value to any person, with intent to influence and reward an agent of a local school district, which local school district received federal assistance in excess of \$10,000 in a one-year period, in connection with any business, transaction, or series of transactions of such local school district involving anything of \$5,000 or more, to wit: Defendant R. CLAY HARRIS corruptly gave to Arthur Scott, on or about the dates listed in Column B, checks payable to M&S Consulting in the amounts identified in Column C, below:

A. COUNT	B. DATE	C. CHECK AMOUNT
2	8/30/2002	\$37,917
3	10/9/2002	\$7,917
4	11/13/2002	\$7,914
5	11/26/2002	\$7,914

in each instance with the intent to influence and reward Arthur

Scott, an agent of APS, and for the Defendant, R. CLAY HARRIS, and his company, MCSC, to be rewarded in connection with APS' E-Rate program and other APS work.

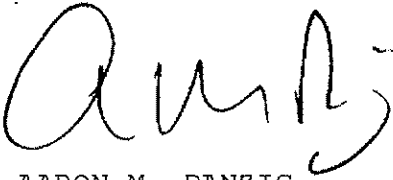
All in Violation of Title 18, United States Code, Section 666(a) (2).

A _____ BILL

FOREPERSON

DAVID E. NAHMIAS
UNITED STATES ATTORNEY

THOMAS O. BARNETT
ASSISTANT ATTORNEY GENERAL
ANTITRUST DIVISION



AARON M. DANZIG
ASSISTANT U.S. ATTORNEY
Georgia Bar No. 205151



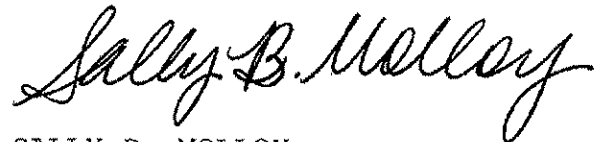
GLENN D. BAKER
ASSISTANT U.S. ATTORNEY
Georgia Bar No. 033450

75 Spring Street, S.W.
Suite 600
Atlanta, Georgia 30303
(404) 581-6000
(404) 581-6181 (fax)

NEZIDA S. DAVIS
CHIEF, ATLANTA FIELD OFFICE



KAREN SAMPSON JONES
TRIAL ATTORNEY
Pennsylvania Bar No. 45314



SALLY B. MOLLOY
TRIAL ATTORNEY
Georgia Bar No. 140816

75 Spring Street, S.W.
Suite 1176
Atlanta, Georgia 30303
(404) 331-7100
(404) 331-7110